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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

RAIMI SHOAGA, Plaintiff and Appellant, v. KENNETH YOUNG, et al., Defendants and Respondents.	A104911 (Alameda County Super. Ct. No. 200131629)

Raimi Shoaga appeals from a judgment entered in favor of respondents Kenneth and Patty Young, following a court trial on appellant's second amended complaint alleging—among other things—fraud, wrongful eviction, conversion of property, and breach of the warranty of habitability. Appellant asserts the trial court erred by (a) finding his cause of action for breach of the warranty of habitability time barred under the statute of limitations, and (b) determining that appellant failed to sustain his burden of proof on his cause of action for conversion. The appeal is completely devoid of merit, and we affirm the judgment of the trial court.

Appellant requested no reporter's transcript of the court trial in this case, and his briefs contain no citations to the record. Insofar as can be gleaned from the briefing and the documents in the partial clerk's transcript, the underlying dispute concerns appellant's rental of property in Oakland pursuant to a written month-to-month lease agreement between appellant and respondents entered into in 1993. According to appellant's opening brief and the allegations of his first amended complaint, the residence was in "total disrepair, [and] unfit for human accommodation" at the time appellant entered into

the lease agreement. In consideration for the "nominal," "minimal monthly rents" he was charged, appellant had a "simple verbal agreement" with respondents, through their agent, "not to ever complain about" the condition of the house he was renting, and that respondents would "fix nothing except real major problems."

In August 2000, respondents initiated eviction proceedings against appellant. On August 28, 2000, the parties filed a written stipulation for dismissal of the proceedings, pursuant to which appellant was given until November 30, 2000 to vacate the premises and remove his possessions. According to the allegations of appellant's first amended complaint and statements in the opening brief on this appeal, appellant thereafter received a 7-day eviction notice on October 13, 2000; and at some point between that date and November 20, 2000, his property was "removed or caused to be removed" from the premises.

Appellant filed the original complaint in this matter on November 20, 2001, alleging causes of action for, among other things, conversion, fraud, and wrongful eviction. He filed a first amended complaint on March 28, 2002, alleging the same general causes of action and amplifying his factual allegations. Following the trial court's sustaining of demurrers to several causes of action in the first amended complaint, appellant moved to file a second amended complaint. After the trial court granted leave to do so, appellant filed a second amended complaint on May 12, 2003. The matter came on for court trial on August 22, 2003. The trial court filed its judgment in favor of respondents on November 25, 2003. Because no party requested any statement of decision, there is none.

Appellant's arguments are based upon his highly selective recitation of alleged facts favorable to his position, ignoring any evidence to the contrary. Indeed, neither of appellant's briefs contains *any* citations to the record. "Such briefing is manifestly deficient. [¶] 'The rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned

is deemed to be waived. [Citation.] It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings.' [Citations.]" (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; see also *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 782.)

It is well established that any statement in an appellate brief concerning matters in the record—whether factual or procedural, and no matter where in the brief the reference occurs—must be supported by a citation to the record. (Cal. Rules of Court, rule 14(a)(1)(C); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 & fn. 16; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29-30.) When an opening brief fails to make appropriate references to the record in connection with the points urged on an appeal, the appellate court may treat those points as having been waived, and may disregard the accompanying arguments. (*Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560-1561; *City of Lincoln v. Barringer, supra,* 102 Cal.App.4th at p. 1239; *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1301; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1; *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) Because appellant's briefs do not contain any citations to the record, we may disregard them, and summarily reject the contentions he makes on appeal. (*City of Lincoln v. Barringer, supra,* 102 Cal.App.4th at p. 1239; *In re Marriage of Fink, supra,* 25 Cal.3d at p. 888 ["It is neither practical nor appropriate for us to comb the record on [appellant's] behalf"].)

Aside from appellant's failure to include any citations to the record in his briefs, we must take into account the inadequacy of the appellate record itself. As noted, there is no reporter's transcript of the trial in this case, and the clerk's transcript contains only a partial record of the proceedings below. By failing to request a reporter's transcript and appealing on the basis of a partial clerk's transcript, appellant has prevented us from reviewing the evidence in the case and evaluating his arguments on this appeal. "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all*

evidentiary matters. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence. [Citations.]" (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385-386 ["When an appeal is taken on a partial clerk's transcript, the evidence is conclusively presumed to support the judgment"].)

As if this were not enough, in this case appellant did not request that the trial court issue a statement of decision. Where the parties have failed to request a statement of decision, all legal and factual inferences must favor the ruling below. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792; see *Walling v. Kimball* (1941) 17 Cal.2d 364, 373.) In such circumstances, an appellate court will presume that the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record, and indulge all presumptions in favor its decision. In other words, the necessary findings of ultimate facts will be implied, and the only issue on appeal will be whether the *implied* findings are supported by substantial evidence. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Michael U. v. Jamie B., supra,* 39 Cal.3d at pp. 792-793; *Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140.)

Even if we were to exercise our discretion to address the purported issues raised by appellant, the state of the appellate record is such as to render fruitful discussion of his assertions impossible. Appellant contends that the trial court erred in its "determination[s]" that his cause of action for "breach of [the] implied covenant of habitability" was "barred by the statute of limitations," and that he had "failed to sustain his burden of proof regarding [his] cause of action for conversion." However, neither of these alleged determinations appears anywhere in the record before us. In the absence of either a trial transcript or a statement of decision, it is impossible to know upon what evidence the trial court entered judgment for respondents, or even the specific grounds for its decision. Appellant's failure to supply a reporter's transcript or any record citations in his briefs—even to the inadequate partial record he did provide—is

necessarily fatal to his claim. (*In re Marriage of Fink, supra,* 25 Cal.3d at pp. 887-888; *Estate of Fain, supra,* 75 Cal.App.4th at p. 992; *Sui v. Landi, supra,* 163 Cal.App.3d at pp. 385-386.)[1]

DISPOSITION

The judgment of the trial court in respondents' favor is affirmed. Appellant shall pay respondents' costs on this appeal.

_____
McGuiness, P.J.

We concur:

_____
Parrilli, J.

_____
Pollak, J.

[1] Assuming for the sake of argument the trial court did find that any claim of breach of implied warranty of habitability was time barred, such a determination would have been supported by appellant's own admissions in the record that, in consideration for paying only "nominal" or "minimal" rent, he had a "verbal [i.e. oral or unwritten] agreement" with respondents, through their agent, "not to ever complain about the house, and [that respondents] will fix nothing except real major problems." The statute of limitations for suits based on oral agreements is two years. (Code Civ. Proc., §§ 339, 339.5.) The record shows appellant did not state a cause of action based on alleged breach of the implied warranty of habitability until the filing of his second amended complaint on May 12, 2003, more than two years after his eviction from the property.

As for appellant's second contention, this is nothing more than a claim that the trial court's judgment was not supported by substantial evidence. Obviously, this court cannot decide an issue of sufficiency of the evidence in the absence of any meaningful record. (*In re Marriage of Fink, supra,* 25 Cal.3d at pp. 887-888; *Estate of Fain, supra,* 75 Cal.App.4th at p. 992; *Sui v. Landi, supra,* 163 Cal.App.3d at pp. 385-386.)